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No. PD-1300-16

IN THE COURT OF CRIMINAL APPEALS

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COURT OF CRIMINAL APPEALS
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ABEL ACOSTA, CLERK

OF THE STATE OF TEXAS

ELVIS ELVIS RAMIREZ-TAMAYO, Appellant

v.

THE STATE OF TEXAS, Appellee

Appeal from Potter County

* * * * *

STATE'S BRIEF ON THE MERITS

* * * * *

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No. PD-1300-16

IN THE COURT OF CRIMINAL APPEALS

OF THE STATE OF TEXAS

ELVIS ELVIS RAMIREZ-TAMAYO, Appellant

v.

THE STATE OF TEXAS, Appellee

* * * * *

STATE'S BRIEF ON THE MERITS

* * * * *

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Comes now the State of Texas, by and through its State Prosecuting Attorney, and respectfully presents to this Court its brief on the merits.

STATEMENT OF THE CASE

Appellant was detained for speeding. During that detention, the deputy noticed various facts that, based on his training and experience, caused him to suspect drug trafficking. Appellant was arrested after a dog-sniff confirmed these suspicions. The trial court denied appellant's motion to suppress, but the court of appeals reversed. It held that the deputy's expert opinion regarding the significance of seemingly innocent facts was not reliable and so appellant was illegally detained.

STATEMENT REGARDING ORAL ARGUMENT

The Court denied the State's request for argument.

ISSUES PRESENTED

1. **The court of appeals ignored the law governing the review of suppression rulings by, *inter alia*, considering the circumstances in isolation, focusing on their innocent nature, and generally failing to defer to the fact-finder.**

2. **Under what circumstances is a reviewing court permitted to ignore a credible officer's inferences and deductions based on his training and experience?**

STATEMENT OF FACTS

Potter County Deputy Sheriff Casey Simpson stopped appellant for speeding on Interstate 40.[1] Simpson had been a peace officer for roughly seven years at the time of the stop.[2] He was assigned to the Criminal Intelligence Unit and mainly worked "the highway and interdiction functions,"[3] meaning he is out on the streets every day.[4]

Simpson approached the passenger side of appellant's car for his own safety.[5]

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1 2 RR 9.

2 2 RR 8-9.

3 2 RR 8.

4 2 RR 8.

5 2 RR 11.

When Simpson neared the window, appellant did not attempt to lower it.[6] Instead, he immediately leaned across to open the door.[7] Simpson considered this strange.[8] The car was both new and a rental; it had electric windows that could be controlled from the driver's side, and he treated it as a "common assumption" that everything worked.[9] He saw no damage that might explain why they would not.[10] This raised suspicion because the space between the interior door panel and outer door skin is "very commonly" used by traffickers to store drugs; when filled, it prevents the window from rolling down.[11] Simpson had "seen it a few times."[12]

The fact that the car was a rental made Simpson suspicious for other reasons.[13] Based on his experience with interdiction stops, it is "pretty common" that drug traffickers use rental cars rather than their own.[14] Also, there were two "no smoking" stickers in the windows but the ash tray was full of cigarette butts and ashes were

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6 2 RR 11-12, 33-34.

7 2 RR 11, 34.

8 2 RR 12, 41.

9 2 RR 12, 14-18, 34-35.

10 2 RR 12, 14-18, 34-35.

11 2 RR 18, 45.

12 2 RR 18.

13 2 RR 36.

14 2 RR 44.

everywhere inside the vehicle.[15] Simpson thought this curious because smoking in a rental car is typically forbidden (as evinced by the stickers) and a chain-smoker who wanted to avoid further charges would roll the windows down while smoking.[16]

Not surprisingly, Simpson noticed cigarette odor.[17] Appellant also had "a very overwhelming smell of cologne."[18] The amount was "out of the ordinary."[19] In Simpson's experience, traffickers use "cover odors" to disguise the smell of narcotics.[20]

Appellant told Simpson he was traveling from "casino," which Simpson took to mean Las Vegas, to Miami, Florida, where he lived.[21]

Finally, appellant also appeared "nervous and excited," and was constantly shifting in the front passenger seat of Simpson's patrol car even after he was told he would only receive a warning for speeding.[22] Simpson believed appellant showed "severe nervousness" as compared to the "normal nervous behavior" exhibited by the

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[15] 2 RR 15, 22-23, 37-38.

[16] 2 RR 23, 45.

[17] 2 RR 22.

[18] 2 RR 22.

[19] 2 RR 39.

[20] 2 RR 22.

[21] 2 RR 35. English did not appear to be appellant's first language, but Simpson was able to communicate with him. 2 RR 40.

[22] 2 RR 24-25.

average detainee.[23]

Based on the foregoing, Simpson believed he had reasonable suspicion to further detain appellant so that an already-present drug dog could circle the car.[24] The resulting search revealed almost 20 lbs. of marijuana hidden in vacuum-sealed bags in all four doors.[25]

Appellant filed a motion to suppress.[26] At the hearing, defense counsel got Simpson to agree that some of the circumstances could have had innocent explanations,[27] but counsel did not challenge the training and experience underlying Simpson's specific conclusions. The only cross-examination of that nature pertained to the calibration of Simpson's radar gun.[28] Appellant argued in closing that the facts did not provide reasonable suspicion because nothing—not the speeding "three miles over the limit," the rental car, the window, his clothes, the cologne—"points to weapons, drugs or large amounts of money."[29] After the hearing, the trial court

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[23] 2 RR 23-24, 42 ("a lot of nervousness").

[24] 2 RR 27, 41.

[25] 2 RR 19-21, 27-28; State's Ex. 3 & 4 (lab report and substance analysis).

[26] 1 CR 19.

[27] 2 RR 35 (keeping windows up for noise or air resistance), 37 (renters do not always check window function), 39-40 (colognes vary in strength).

[28] 2 RR 29-32.

[29] 2 RR 50-51.

denied appellant's motion to suppress.[30] No findings of fact were requested or made.

SUMMARY OF THE ARGUMENT

The issue presented is what standard of review to apply to a suppression ruling based on an officer's explanation of how seemingly innocent facts were suspicious in light of his training and experience. Although this Court recognizes the inapplicability of the rules of evidence to a motion to suppress, it has also said that the trial court's gatekeeping role requires inquiry into the "relevance and reliability of the factual information submitted by the parties."[31] Despite any cases to the contrary, the trial court should have the same discretion to assign weight to an officer's expert testimony as it does when making any credibility determination relevant to a "preliminary question."

ARGUMENT

I. Standards of Review

Reasonable suspicion

An officer must have reasonable suspicion to temporarily detain a suspect. "'Reasonable suspicion' exists if the officer has specific articulable facts that, when combined with rational inferences from those facts, would lead him to reasonably suspect that a particular person has engaged or is (or soon will be) engaging in

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[30] 2 RR 52; 1 CR 37-38 (order).

[31] *Ford v. State*, 305 S.W.3d 530, 536 (Tex. Crim. App. 2009).

criminal activity."[32] Once the "mission" of the detention is satisfied (or should have been, given the length of detention), the suspect must be released.[33] The exception, applicable in this case, is when the officer acquires additional reasonable suspicion to prolong the detention.[34] As with the initial detention, the length of the additional detention must be reasonable; an officer must act to confirm or dispel his suspicions quickly.[35] "One reasonable method of confirming or dispelling the reasonable suspicion that a vehicle contains drugs is to have a trained drug dog perform an 'open air' search by walking around the car."[36]

When determining the presence of reasonable suspicion, the reviewing court must consider the totality of the circumstances; a "divide-and-conquer" or piecemeal approach is prohibited.[37] Additionally, the focus must be on the circumstances that exist, not the absence of other circumstances present in similar cases.[38] "To the extent that a totality of the circumstances approach may render appellate review less

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[32] *Garcia v. State*, 43 S.W.3d 527, 530 (Tex. Crim. App. 2001).

[33] *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015).

[34] *St. George v. State*, 237 S.W.3d 720, 726-27 (Tex. Crim. App. 2007).

[35] *Matthews v. State*, 431 S.W.3d 596, 603 (Tex. Crim. App. 2014).

[36] *Id*.

[37] *Wiede v. State*, 214 S.W.3d 17, 25 (Tex. Crim. App. 2007).

[38] *Cf. Murray v. State*, 457 S.W.3d 446, 449 (Tex. Crim. App. 2015) (criticizing the lower court's sufficiency review for "focus[ing] its analysis on evidence that was *not* admitted at trial by distinguishing 'missing' evidence in Appellant's case from evidence present in preceding cases.") (emphasis in original).

circumscribed by precedent than otherwise, it is the nature of the totality rule."[39] Finally, the behavior that forms the basis for reasonable suspicion need not be inherently criminal.[40]

Training and experience informs the inquiry.

Importantly, the behavior need not even be "unusual" in the abstract. Although the "reasonable suspicion" standard is often phrased in terms of unusual activity,[41] this emphasis can be misleading unless it is remembered that the information available to the officer must be "viewed through the prism of the detaining officer's particular level of knowledge and experience."[42] Because their "experience and

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[39] *United States v. Arvizu*, 534 U.S. 266, 276 (2002).

[40] *United States v. Sokolow*, 490 U.S. 1, 10 (1989) ("[T]he relevant inquiry is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attaches to particular types of noncriminal acts.") (citations and internal quotations omitted). *See also Matthews*, 431 S.W.3d at 603 ("Although some circumstances may seem innocent in isolation, they will support an investigatory detention if their combination leads to a reasonable conclusion that criminal activity is afoot."); *Derichsweiler v. State*, 348 S.W.3d 906, 914 (Tex. Crim. App. 2011) (same). This Court abandoned the "as consistent with innocent activity" construct 20 years ago. *Woods v. State*, 956 S.W.2d 33, 38-39 (Tex. Crim. App. 1997).

[41] *Terry v. Ohio*, 392 U.S. 1, 30 (1968) (allowing brief detention "where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot"); *Martinez v. State*, 348 S.W.3d 919, 925 (Tex. Crim. App. 2011) ("The facts must show that an unusual activity occurred, the unusual activity is related to a crime, and the detained person had some connection to the unusual activity."); *Meeks v. State*, 653 S.W.2d 6, 12 (Tex. Crim. App. 1983) (same).

[42] *Derichsweiler*, 348 S.W.3d at 915. *See also Kolender v. Lawson*, 461 U.S. 352, 368 (1983) (reasonable suspicion "depends solely on the objective facts known to the officers and evaluated in light of their experience."); *United States v. Cortez*, 449 U.S. 411, 418 (1981) ("Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.").

specialized training"[43] gives them familiarity with "the modes or patterns of operation of certain kinds of lawbreakers,"[44] a trained officer can draw "inferences and deductions that might well elude an untrained person."[45] Of course, officers are no less entitled than jurors to form "certain commonsense conclusions about human behavior."[46] Finally, the fact that the circumstances present in a given case "may be set forth in a 'profile' does not somehow detract from their evidentiary significance as seen by a trained agent."[47]

Motions to suppress

Motions to suppress are reviewed for abuse of discretion using a bifurcated standard of review.[48] On one hand, the reviewing court affords "almost total deference to a trial court's determination of historical facts."[49] On the other, the trial court's application of law to fact—like determining the presence *vel non* of reasonable suspicion—is reviewed *de novo* if the decision does not turn upon

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43 *Arvizu*, 534 U.S. at 273.

44 *Cortez*, 449 U.S. at 418.

45 *Id*.

46 *Id*.

47 *Sokolow*, 490 U.S. at 10.

48 *Furr v. State*, 499 S.W.3d 872, 877 (Tex. Crim. App. 2016).

49 *Garcia*, 43 S.W.3d at 530.

credibility and demeanor.[50] In the absence of findings of fact, the appellate court implies the necessary fact findings that would support the trial court's ruling if the evidence (viewed in the light most favorable to the trial court's ruling) supports these implied fact findings.[51]

The rules regarding expert testimony do not apply.

As explained in *Ford v. State*, "[a] hearing on a pre-trial motion to suppress is a specific application of Rule 104(a) of the Texas Rules of Evidence."[52] Rule 104 deals with "preliminary questions," one of which is the admissibility of evidence.[53] "In essence, a pretrial motion to suppress evidence is nothing more than a specialized objection to the admissibility of that evidence."[54] When the trial court determines admissibility, it "is not bound by evidence rules, except those on privilege."[55] Because "the trial judge, in his discretion, may use different types of information,

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[50] *Id*.

[51] *State v. Kelly*, 204 S.W.3d 808, 819 (Tex. Crim. App. 2006).

[52] 305 S.W.3d at 534.

[53] TEX. R. EVID. 104(a).

[54] *Black v. State*, 362 S.W.3d 626, 633 (Tex. Crim. App. 2012) (citation and internal quotations omitted).

[55] TEX. R. EVID. 104(a); *Ford*, 305 S.W.3d at 535; *see also* TEX. R. EVID. 101(e)(1) ("These rules - except for those on privilege - do not apply to: (1) the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility").

conveyed in different ways, to resolve the contested factual or legal issues[,]"[56] "evidence that is otherwise inadmissible at trial under the Rules of Evidence may well be admissible at a suppression hearing."[57] Applicable in this case, "because Rule 702's requirements, as set out in *Kelly* [*v. State*, 824 S.W.2d 568 (Tex. Crim. App. 1992)], do not apply to suppression hearings, there is no threshold admissibility determination under the Rules of Evidence"[58] when the trial court admits evidence based, in part, on scientific or expert testimony.

But Ford appears to create a parallel framework.

Despite this seeming clarity, this Court has also held that the trial court has a duty comparable to that in a hearing on the admissibility of expert testimony.

In *Ford*, this Court was asked to decide what limits, if any, TEX. CODE CRIM. PROC. art. 28.01 places on the trial court's ability to consider an unsworn police report in a pretrial suppression hearing.[59] The short version is that "a trial court may rely upon any relevant, reliable, and credible information, even though it may be unsworn hearsay."[60] The long version is more complicated.

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[56] *Ford*, 305 S.W.3d at 538.

[57] *Hall v. State*, 297 S.W.3d 294, 297 (Tex. Crim. App. 2009).

[58] *Id*.

[59] *Ford*, 305 S.W.3d at 531.

[60] *Id*.

In one sentence, this Court acknowledged that Rule 104(a) "explicitly states that a trial judge is not bound by the rules of evidence in resolving questions of admissibility of evidence."[61] In the next sentence, however, it defined a "'gatekeeping' role" for the trial court that borrowed heavily from the law governing the admissibility of expert witnesses.[62] It compared this role to that played when deciding the admissibility of expert testimony, going so far as to say that the "underlying goal of Rule 104(a) is the same in a motion to suppress" as it is when dealing with expert or scientific evidence: "The trial judge makes a legal ruling to admit or exclude evidence based upon the relevance and reliability of the factual information submitted by the parties."[63] In support, it cited numerous cases on expert testimony.[64] So is the standard for considering expert testimony on a preliminary matter the same as admitting it at trial or not?

It cannot be argued that irrelevant or unreliable evidence can support a ruling on a suppression motion. On some level, this Court must be able to "determine

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[61] *Id*. at 535.

[62] *Id*.

[63] *Id*. at 536.

[64] *See id*. at 535 n.21 (citing *Hernandez v. State*, 116 S.W.3d 26, 31 n.11 (Tex. Crim. App. 2003), the seminal case that explained that all the "swell stuff," id. at 31, the State never presented to the trial court could not be considered on appeal), 536 n.22 (citing *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549 (Tex. 1995), and other cases dealing with the admissibility of scientific testimony).

whether the trial court abused his discretion by relying upon [a particular piece of evidence]."[65] It is the scope of this review that is at issue. Why was it significant that Ford did not argue that the hearsay in his case "was, in any way, unauthentic, inaccurate, unreliable, or lacking in credibility"?[66] It is one thing when there is "absolutely no evidence to show" that the source "supplies reasonably trustworthy information," as in *Hall*,[67] but how can a reviewing court determine whether "the source and content" of evidence is unreliable when the evidence is a man speaking to his personal experience?[68] What could an appellant argue that would entitle an appellate court to reject the trial judge's determination that a witness in his court—in person or on paper—was credible?

The answer should be, "Nothing." Absent some incontrovertible proof that places the fact at issue beyond the realm of credibility and weight

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[65] *Id*. at 539.

[66] *Id*. at 540 (saying it would have been "a very different case" had he done so). The United States Supreme Court presented an equally vague juxtaposition in *United States v. Matlock*, 415 U.S. 164 (1974), cited by *Ford*. It agreed that rules of evidence should not apply, and said "the judge should receive the evidence and give it such weight as his judgment and experience counsel." *Id*. at 175. This discretion seems boundless yet, just as *Ford* invites Texas courts to go behind the judge's decision to believe a witness, the Supreme Court offered in a supporting footnote that "the judge should be empowered to hear any relevant evidence, such as affidavits or other *reliable* hearsay[,]" *id*. at n.12 (citation omitted) (emphasis added), and then describes at length why there were no "serious doubts" about the truthfulness of the hearsay statements at issue. *Id*. at 175-77.

[67] 297 S.W.3d at 298 (finding an abuse of discretion in the denial of a suppression motion because there was no evidence that LIDAR technology, as used in that case, supplied probable cause for the stop).

[68] *Ford*, 305 S.W.3d at 539 (discussing burden with hearsay document).

determinations—such as the "indisputable visual evidence" in *Carmouche v. State*[69]—the trial court's decision to believe a witness at a suppression hearing should be unassailable. If an officer swears that his training and experience make a pedestrian fact suspicious, the trial court's inherent discretion to find that officer credible should prevail.

Admissibility—relevance and reliability—must be raised in the trial court.

If there is to be any credibility battle based on the alleged insufficiency of the officer's training and experience, it should be waged in the trial court, not the court of appeals. One of the interesting aspects of this case is that, even if Rule 702 applied to Simpson's expert testimony, appellant would have forfeited any complaint by not objecting on that basis. As explained in *State v. Esparza*:

> At trial, the proponent of scientific evidence is not typically called upon to establish its empirical reliability as a predicate to admission unless and until the opponent of that evidence raises an objection under Rule 702. It is only "[o]nce the party opposing the evidence objects . . . [that] the proponent bears the burden of demonstrating its admissibility." . . . But it is not called upon to satisfy that burden unless and until the [opponent] has made a specific objection that those test results are scientifically unreliable or (perhaps) until the trial court, in its capacity as the gatekeeper of the admissibility of scientific evidence, should *sua sponte* call upon it to do so.[70]

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[69] 10 S.W.3d 323, 332 (Tex. Crim. App. 2000) (declining to give "almost total deference" to the trial court's implicit findings because a videotape contradicted essential portions of the witness's testimony).

[70] 413 S.W.3d 81, 86 (Tex. Crim. App. 2013) (internal citations omitted).

In *Esparza*, this Court declined application of the so-called *Calloway* rule, which allows an appellee to argue on appeal that the trial court's ruling should be affirmed on any applicable theory of law, regardless of whether it was raised or ruled upon at trial.[71] It found that application of the *Calloway* rule "works a manifest injustice" when the alternative legal theory proffered for the first time on appeal "turns upon the production of predicate facts by the appellant that he was never fairly called upon to adduce during the course of the proceedings below."[72]

Notably, *Esparza* prevents review of the admissibility of the scientific evidence itself. It follows that an appellant who cannot challenge for the first time on appeal the admissibility of expert testimony also cannot challenge a ruling on the basis that it relied on that unobjected-to testimony. Just as the proponent was not called upon to satisfy any burden under Rule 702, so too was the trial judge not called upon to question it. Thus, the failure to request a Rule 702 hearing, or some approximation thereof, prevents the opponent of expert testimony from complaining about it in any form for the first time on appeal.

Or does it?

In *Walker v. State*,[73] a recent unpublished case, this Court embraced the Texas

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[71] *Id*. at 89. *See Calloway v. State*, 743 S.W.2d 645 (Tex. Crim. App. 1988).

[72] *Esparza*, 413 S.W.3d at 90.

[73] *Walker v. State*, PD-1429-14, PD-1430-14, 2016 Tex. Crim. App. Unpub. LEXIS 973 (Tex. (continued...)

Supreme Court's limited practice of rejecting expert testimony despite a lack of objection at trial. It cited *Coastal Transp. Co. v. Crown Cent. Petroleum Corp*., in which the Supreme Court outlined when a no-evidence review can ignore what an unchallenged expert said:

> [W]hen a reliability challenge requires the court to evaluate the underlying methodology, technique, or foundational data used by the expert, an objection must be timely made so that the trial court has the opportunity to conduct this analysis. However, when the challenge is restricted to the face of the record -- for example, when expert testimony is speculative or conclusory on its face -- then a party may challenge the legal sufficiency of the evidence even in the absence of any objection to its admissibility.[74]

This Court's decision in *Walker* does not follow this framework. It had previously held in *Winfrey v. State* that scent-discrimination lineups, when used alone or as primary evidence, are legally insufficient to support a conviction.[75] In *Walker*, it took what it deemed "the next, necessary step and h[e]ld that a conclusory expert opinion based upon insufficient facts is not probative evidence."[76] The problem is that, by

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[73](...continued)
Crim. App. Oct. 19, 2016) (not designated for publication).

[74] 136 S.W.3d 227, 233 (Tex. 2004).

[75] 323 S.W.3d 875, 884 (Tex. Crim. App. 2010).

[76] *Walker*, 2016 Tex. Crim. App. Unpub. LEXIS 973 at *52. *See also id.* at *58 (Yeary, J., concurring and dissenting) (agreeing with the "implicit assumption that, even in the absence of an express challenge to the reliability of expert testimony, a reviewing court may take the reliability of that testimony into account in conducting a legal sufficiency analysis.").

definition, an expert opinion is not a "bare conclusion"[77] if there is foundational data to criticize. In effect, this Court took into account the factual gaps in the experts' analysis and decided the weight to give the opinions in light of those deficiencies. This was a job for the jury.[78]

For whatever persuasive value *Walker* has, its analysis was made possible by extensive cross-examination that revealed the complete factual basis of the experts' opinions. In this case, appellant never challenged the factual basis for Simpson's opinion. Because it is possible that, as in *Esparza*, more "predicate facts" could have been developed, it would be manifestly unjust to reject the basis of the trial court's ruling without an objection to Simpson's reliability in the trial court. *Walker* is at least distinguishable on that basis.[79]

II. Application

Deputy Simpson did not offer a conclusory opinion that appellant was trafficking drugs. Simpson explained why the circumstances, viewed through the lens

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[77] *Coastal Transp. Co.*, 136 S.W.3d at 233.

[78] *See Jordan v. State*, 928 S.W.2d 550, 556 (Tex. Crim. App. 1996) ("The question under Rule 702 is not whether there are some facts in the case that the expert failed to take into account, but whether the expert's testimony took into account enough of the pertinent facts to be of assistance to the trier of fact on a fact in issue. That some facts were not taken into account by the expert is a matter of weight and credibility, not admissibility.").

[79] The Court also supported its holding on the basis that the legal-sufficiency standard requires it to decide whether finding an expert credible is rational. *Walker*, 2016 Tex. Crim. App. Unpub. LEXIS 973 at *52.

of his training and experience, convinced him to briefly extend appellant's detention so that he could quickly confirm or dispel his suspicion. Appellant did not challenge Simpson's credibility. Appellant did not question Simpson's experience with drug interdiction. More importantly, appellant did not challenge Simpson's application of that experience to the facts surrounding appellant's detention. In the absence of findings of fact, the court of appeals should have presumed that the trial court believed Simpson's assertions regarding the significance of individual circumstances. Had it done so, it would have concluded that the trial court's ruling was not an abuse of discretion.

Instead, the court of appeals refused to consider any of the circumstances because none of them were inherently criminal and it was not satisfied by Simpson's explanation of their significance. But the court of appeals did not have to have "confidence about the[] reliability and accuracy" of Simpson's opinion[80]—the trial court did. Even more so than the "unsworn hearsay document" at issue in *Ford*,[81] the judge was entitled to rely on the sworn testimony of a peace officer regarding the significance of facts in light of his training and experience. The State should not have to prove on appeal the accuracy of a factual assertion that it was not asked to defend

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[80] *Ramirez-Tamayo v. State*, 501 S.W.3d 788, 800 (Tex. App.–Amarillo 2016).

[81] 305 S.W.3d at 539.

in the trial court.

III. Conclusion

The court of appeals used an inapplicable standard for expert testimony to effectively strike an officer's testimony from the record. Regardless of how the trial court's role at a hearing on a motion to suppress is characterized, it has the inherent ability to weigh the credibility of the witnesses before it. An appellate court cannot reject a witness's opinion based on his training and experience simply because it would have insisted upon a more comprehensive curriculum vitae or statistical analysis of interdiction stops. Because this court of appeals did, it failed to consider the evidence in the light most favorable to the trial court's ruling and incorrectly found an abuse of discretion.

PRAYER FOR RELIEF

WHEREFORE, the State of Texas prays that the Court of Criminal Appeals reverse the judgment of the Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that according to the WordPerfect word count tool this document contains 5,209 words.

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The undersigned hereby certifies that on this 24th day of February, 2017, a true and correct copy of the State's Brief on the Merits has been eFiled or e-mailed to the following:

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